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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(Honorable Cathy Ann Bencivengo)

UNITED STATES OF AMERICA,) CASE NO.: 3:13-cr-3046-CAB
v.)
Plaintiff) **MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S
SECOND/SUPPLEMENTAL MOTION
FOR DISCOVERY; REQUEST FOR
LEAVE TO FILE ADDITIONAL
MOTIONS**
WILLIAM RICHARD BAILEY)
Defendant.) Date: November 22, 2013
) Time: 11:00 a.m.
) Courtroom 4C

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1 **I. INTRODUCTION**

2 Defendant, WILLIAM RICHARD BAILEY (“Dr. Bailey”) moves to compel further
 3 production and inspection, from Plaintiff United States of America (“the government”), of
 4 discovery in the possession of the government but which has not yet been produced, including
 5 certain Internal Revenue Service (“IRS”) records¹ for the years 1998-present pertaining to the
 6 defendant and/or his defense, outlined *infra*.

7 Much is lacking from the government’s sparse initial production thus far, and an
 8 abundance of necessary material, both related to the government’s burden and Dr. Bailey’s
 9 defenses, is within the documents and records maintained by the IRS and government agents
 10 involved in this case.² This discovery is essential to Dr. Bailey’s defense against the charges he
 11 faces, including that such documents will demonstrate to the Court and to the jury that the IRS
 12 must comply with certain statutes, regulations and Internal Revenue Manual (“IRM”) provisions

14

¹ IRM 1.15.2.2 (08-30-2013) Definition of Records

15 According to 44 United States Code (USC) Section 3301, the term “record” includes all
 16 books, papers, maps, photographs, machine readable materials, or other documentary
 17 materials, regardless of physical form or characteristics, made or received by an agency
 18 of the U.S. Government under Federal law or in connection with the transaction of public
 19 business and preserved or appropriate for preservation by that agency or its legitimate
 20 successor as evidence of the organization, functions, policies, decisions, procedures,
 21 operations, or other activities of the government or because of the informational value of
 22 data in them.

23 http://www.irs.gov/irm/part1/irm_01-015-002.html (September 29, 2013).

24 ² To the extent that any of the specific documents requested herein do not exist, Dr. Bailey
 25 requests that the government clearly state so and provide a verification that they do not exist in
 26 the record. Further, if the requested material existed at any time in IRS records pertaining to the
 27 defendant but were erased, reversed or by any other means disappeared from such records, it is
 28 requested that the government produce the “disappeared” or missing records as they existed
 before disappearance.

When Dr. Bailey uses the word “identify” below in reference to any IRS employee, he respectfully requests that he be provided with a full legal name, official job title, GS rating, official job description, and supervisor of the employee. He asks that he be provided with contact information for them and their supervisor, to include official contact telephone number, complete mailing address and physical address, sufficient for service of process for the individual being identified.

1 in its determinations of a tax liability and deficiency without which no tax is owed. Absent a tax
 2 deficiency, tax evasion cannot be proven.

3 **II. BRIEF STATEMENT OF FACTS AND PROCEDURE**

4 Dr. Bailey has been charged with multiple violations of Title 26, United States Code
 5 Section 7201- tax evasion.

6 On September 27, 2013, since the government had produced essentially no relevant
 7 discovery, Dr. Bailey motioned the court for an order for the production of certain categories of
 8 discovery, as defined by Fed. R. Crim. P.16. *See* Doc. 25. Demanded, with citation to legal
 9 authority, were memorialization of any relevant statements by Dr. Bailey, arrest reports and law
 10 enforcement notes and dispatch recordings relevant to the case, discovery regarding Dr.
 11 Bailey's prior record/criminal history, reports of examinations and tests such as physical and
 12 mental examinations and/or any scientific tests, the identification of any expert witnesses the
 13 government may use here, any and all *Brady* material, *Giglio v. United States*, 405 U.S. 150
 14 (1972) material, Jencks Act material , and any proposed Evidence Code 404(b) evidence.
 15 Defendant also made a request for preservation of physical or other evidence that could be
 16 destroyed, and for an opportunity for inspection of tangible objects relevant to this case, and for
 17 examination or production of evidence seized in this case.

18 On or around October 17, 2013, the government produced discovery which mostly
 19 included large amounts of financial documents from businesses where Dr. Bailey has provided
 20 services, from banks where bailment "trusts" (that the government associates with Dr. Bailey)
 21 banked, and of Dr. Bailey's wife's and stepson's banking activity. This production includes a
 22 grand jury transcript of Dr. Bailey's testimony before a grand jury in this Court in July of this
 23 year. The production also includes some agent reports of the government's investigation of Dr.
 24 Bailey, including memorialization of some interviews agents conducted with various witnesses.

25 Dr. Bailey submits that this production is quite anemic and outlines what is missing in
 26 the argument section below, leading to the present motion. Dr. Bailey notes that this further
 27 request/demand herein outlining the shortfalls in the government's discovery is not exhaustive

1 so the specific requests herein are supplementary and not instead of the requests made in Dr.
 2 Bailey's first discovery motion.

3 **III. ARGUMENT**

4 **A. MOTION TO COMPEL FURTHER DISCOVERY**

5 **i. The government is required to produce relevant evidence and
 6 material that could lead to relevant evidence in its possession**

7 Dr. Bailey's previous motion for discovery outlined the specific case law and rules of
 8 federal criminal procedure that require each category of evidence disclosed and those points and
 9 authorities are incorporated here by reference. *See Doc. 25 at pp. 2-4.*

10 Still, a few points as to the government's obligation here must be briefly emphasized.
 11 First, "*Brady* requires disclosure of exculpatory information that is either admissible or is
 12 reasonably likely to lead to admissible evidence." *United States v. Sudikoff*, 36 F.Supp.2d 1196,
 13 1200 (C.D. Cal. 1999) (emphasis added).

14 Next, Fed.R.Crim.P. 16 requires disclosure of anything "material to the preparation of the
 15 defendant's defense." *E.g. Fed.R.Crim.P.(E)(i); United States v. Jordan*, 316 F.3d 1215, 1249-50
 16 (11th Cir. 2003). Thus,

17
 18 In addition to the government's discovery obligations under Rule 16(a), the
 19 government must also honor the defendant's constitutional rights, particularly the
 20 due process right *Brady v. Maryland* established. *Brady* requires the prosecutor to
 21 turn over to the defense evidence that is favorable to the accused, even though it is
 22 not subject to discovery under Rule 16(a), since, eventually, such evidence may
 23 undermine the confidence in the outcome of the trial.

24 *United States v. Jordan*, 316 F.3d 1215, 1251 (11th Cir. 2003).

25 When a "request identifies *Brady* material, that information shall be disclosed without a
 26 showing by the defense of materiality" during the pre-trial stages. *United States v. Thevis*, 84
 27 F.R.D. 47, 52 (D.C.Ga. 1979). Further, "in those instances in which the accused is
 28 unaware of what the prosecution possesses and must resort to a broadside request for all
 favorable evidence, it would be unrealistic to expect him to show anything more than a general

1 need.” *United States v. Eley*, 335 F.Supp. 353, 357, n.2 (D.C.Ga. 1972). Finally,

2 The problem is that in most cases, it is difficult to forecast the impact that a
 3 particular piece of information will have at trial, where it will fit in the defense
 4 preparation, what kind of other challenges it will or will not lead to. Given the
 5 difficulties of predicting materiality, the most appropriate rule should be one that
 6 errs on the side of disclosure of *Brady* material.

7 *United States v. Snell*, 899 F.Supp. 17, 21, n.9 (D. Mass. 1995).

8 The takeaway to the above is that where “doubt exists as to the usefulness of evidence,
 9 [the government] should resolve such doubts in favor of full disclosure.” *United States v. Van*
 10 *Brandy*, 726 F.2d 548, 552 (9th Cir. 1984). The government has not done so here and Dr. Bailey
 11 requests the Court order further specific discovery outlined below; however, it is necessary to
 12 first briefly review the elements of the single crime charged in this case.

13 **ii. The elements of attempt to evade tax under 26 U.S.C. § 7201**

14 In order to prove that Dr. Bailey violated 26 U.S.C. § 7201, the government must prove,
 15 beyond a reasonable doubt, that Dr. Bailey (1) owed more federal income tax for a the particular
 16 calendar year than was declared due on the his income tax return for that calendar year, (2)
 17 knew that more federal income tax was owed than was declared due on the his income tax return,
 18 (3) made an affirmative attempt to evade or defeat such additional tax; and (4) in attempting to
 19 evade or defeat such additional tax, he acted willfully. *See, e.g., United States v. Kayser*, 488
 20 F.3d 1070, 1073 (9th Cir. 2007).

21 While the government need not prove an exact amount of tax evaded for each year, it
 22 must prove that the amount was substantial. *See, e.g., U.S. v. Stierhoff*, 500 F. Supp. 2d 55, 61-62
 23 (Dis. R.I. 2007) (citing appellate cases); *see also United States v. Masat*, 896 F.2d 88, 97-98 (5th
 24 Cir. 1990) (“three elements to the crime of tax evasion: the existence of a substantial tax
 25 deficiency, willfulness, and an affirmative act made with the intent to evade taxes”) (citing
 26 *Sansone v. United States*, 380 U.S. 343, 351 (1965)); *United States v. McKee*, 506 F.3d. 225,
 27 235-36 (3d Cir. 2007) (deficiency must be substantial).

28 The “affirmative attempt”, i.e. affirmative act, must be a commission, rather than an
 29 omission. *See Masat, supra*, 896 F.2d 88, 98-99.

As to the willfulness element, if evidence shows that Dr. Bailey acted on a good faith misunderstanding as to the requirements of the law it would show that he had not act willfully for purposes of § 7201 even if Dr. Bailey's understanding of the law is wrong or unreasonable.

See e.g. Manual Of Model Criminal Jury Instructions For The District Courts Of The Ninth Circuit, Prepared by the Ninth Circuit Jury Instructions Committee 2010 Edition, Jury Instruction 9.42. While merely disagreeing with the law does not constitute a good faith misunderstanding of the law, in order to prove that Dr. Bailey acted willfully, the government must prove beyond a reasonable doubt that the defendant did not have a good faith belief that he was complying with the law. As the comment to Instruction 9.42 refers:

The government’s burden of proving willfulness requires negating [1] a defendant’s claim of ignorance of the law or [2] a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. *Cheek v. United States*, 498 U.S. 192, 202, 111 S.Ct. 604, 112 L.Ed.2d 617 (1991) (emphasis added). . . . In order to rely on a good faith defense, the defendant must in fact have some “belief;” either that her own understanding was correct, or that she in good faith relied on the tax advice of a qualified tax professional. See *United States v. Bishop*, 291 F.3d 1100, 1106-07 (9th Cir.2002).

United States v. Trevino, 419 F.3d 896, 901 (9th Cir. 2005).

iii. Specific requests

In light of the above, Dr. Bailey specifically requests the following discovery, which, as will be discussed further below, he contends is necessary for him to prepare an adequate defense to the charges in this case against him, and necessary to prepare further pretrial motions:

1. Transcripts and exhibits from the grand jury convened in this court in or around July 2013, of witnesses other than Dr. Bailey who testified in regards to Dr. Bailey;
2. Transcripts and exhibits from the grand jury convened in this court in or around July 2013 of general instructions or advisements not related to any specific witness

3. All exhibits, filings, orders and other documents memorializing any tax court proceeding regarding Dr. Bailey, including the tax court proceeding referenced in paragraph 9 of the government's indictment (Doc. 1)
4. All unfiled (in court) reports of government agents, all recorded communications between Dr. Bailey and Receiver Robert Moser, all communications between government agents and Receiver Moser, and all other documents and/or reports of the government, not filed in the case (excluding attorney work product material) which are in any way related to the "Warehouse Bank" case, *U.S v. Anthony L. Hargis, individually and dba Anthony L. Hargis & Co.*, Case No. SACV 04-00273 DOC (ANx.)(CD Cal.).
5. Documents that were purportedly part of the creation of a "trust" and "unincorporated business trust organization" and purportedly used by Dr. Bailey during at least calendar year 1990 through 2011 allegedly for the purpose of concealing income
6. Documents in the government's possession showing that the contracting trusts and bailment trusts were identified in commerce by a number issued by the Department of the Treasury/IRS which designated them as having no filing requirements (in fact the number indicated that they were common law entities)
7. Documents reflecting and copies of contracts without regard to any limitation the government may place on the term including defining the "trusts" as only/purely statutory
8. Memorializations of agents' interviews with Dr. Dunnum reflecting that he supplied contract information and admonished agents in conversation and in writing not to conflate Dr. Bailey with the contracting trust.

iv. (Other) IRS Records Specific to Dr. Bailey

9. A copy of every Notice of Intent to Levy served on Dr. Bailey for the years 1998-present, pursuant to IRC § 6330.
10. Any copy of a IRC § 6001 notice having been served on Dr. Bailey for the years in question (IRC § 6001 provides, in part: “Whenever in the judgment of the Secretary it is necessary, he may require any person, **by notice served** upon such person or by

1 regulations, to make such returns, render such statements, or keep such records, as the
 2 Secretary deems sufficient to show whether or not such person is liable for tax under this
 3 title.”).

4 11. A complete copy of the AMDISA file (a computer generated summary of the IMF
 5 (Individual Master File), including but not limited to pages 001, 002, and 003 of the file,
 6 for the years 1998-present.

7 12. A copy of Form 5546 Charge Out, for the years 1998-present.

8 13. Form 5344, *Examination Closing Record*, for the years 1998-present.

9 14. Form 4549, *Income Tax Examination Changes* (“Taxable income on the Form 4549
 10 reconciles to the taxable income amount on the MFOLR/BMFOLR”)³, for the years
 11 1998-present.

12 15. Letter 1902B SC Exam/CSCO (SFR Function if marked IRP or SFR), for the years
 13 1998-present.

14 16. Form 895, Notice of Statute Expiration, for the years 1998-present.⁴

15 17. Any and all variants of Form 1902, Report of Individual Income Tax Audit Changes
 16 (obsoleted 1988), e.g., 1902-A, 1902-B, Report of Individual Income Tax Examination
 17 Changes, etc., for the years 1998-present.

18 18. IRC § 6020(b) Assessment Case File – RCS Part and Item No. IV/57, for the years 1998-
 19 present.

20 19. Form 5604, Section IRC § 6020(b) Action Sheet, for the years 1998-present.⁵

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23 ³ IRM 4.8.9.7.9 (07-09-2013) *Other Items to Consider During the Review*
 24 http://www.irs.gov/irm/part4/irm_04-008-009.html (September 29, 2013).

24 ⁴ IRM 4.7.3.7 (01-26-2010) *Form 895 Requirements* http://www.irs.gov/irm/part4/irm_04-007-003.html#d0e393 (September 29, 2013).

25 ⁵ IRM 5.4.10.5 (10-05-2007) IRC 6020(b) (“Requests for 6020(b) will be received in CCP on a
 26 Form 5604, Section 6020(b) Action Sheet, to prepare returns under the authority of IRC 6020(b).
 27 * * * Returns can be prepared for BMF Forms, 720, 940, 941, 943, 944, 1065, 2290, or Form
 28 CT-1. Return requests for the preparation of any other forms to the revenue officer”)
http://www.irs.gov/irm/part5/irm_05-004-010.html (September 29, 2013).

- 1 20. Letter 1085, 30 Day Letter Proposed IRC 6020(b) Assessment, for the years 1998-
- 2 present.⁶
- 3 21. Form 5345, Examination Request, for the years 1998-present.
- 4 22. Form 4340, *Certificate of Assessments, Payments, and Other Specified Matters*, for the
- 5 years 1998-present.
- 6 23. Form 23C, *Summary Record of Assessments*, for the years 1998-present.
- 7 24. Revenue Accounting Control System (RACS) 006, *Summary Record of Assessments* for
- 8 each assessment done by the IRS, for the years 1998-present.
- 9 25. Form 5734, *Non-Master File Assessment Voucher* for each assessment of penalty, taxes,
- 10 interest made in the Non Master File, for the years 1998-present.
- 11 26. A complete, un-redacted copy of Plaintiff's "Protest File" maintained by the IRS.
- 12 27. The following information regarding the individual who signed the Summary record of
- 13 Assessments for the years mentioned above;
 - 14 a. The name of the person who signed this document
 - 15 b. His or her job title
 - 16 c. His or her pay grade
 - 17 d. When he or she was appointed as an Assessment Officer?
 - 18 e. Who appointed him or her as an Assessment Officer?
- 19 28. Individual Master File (IMF) COMPLETE.
- 20 29. Individual Master File (IMF) SPECIFIC.
- 21 30. Non-Master File (NMF).
- 22 31. Automated Non-Master File.
- 23 32. TXMODA (Tax Module A).
- 24 33. TXMODN (Tax Module N).
- 25 34. IMFOLT - Individual Master File On-Line.

27 ⁶ IRM 5.1.11.6.7.2 (03-13-2013) Preparation and Approval of 6020(b) Returns

28 http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html (September 29, 2013).

Memorandum Of Points And Authorities In Support Of Defendant's Second/Supplemental Motion For Discovery; Request for Leave to File Additional Motions

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1 35. BMOLT - Business Master File On-Line.

2 36. All documents associated with each DLN (Document Locator Number) for the entries

3 found in each record, for the years 1998-present. Document Locator Number (DLN) means

4 the number assigned to each return or other document introduced into processing, for control and

5 file reference purposes.

6 37. Computer Form (CF) 5147, *IDRS Transaction Record*, for each TC 290, TC 291, TC

7 300, TC 192, TC 240, TC 196, TC 173, TC 806, TC 166, TC 167, TC 276, TC 670, TC

8 170, TC 171, TC 277, TC 197, TC 820, TC 846, TC 776, and any TC not listed that has

9 dollar amounts entered including \$0.00, for the years 1998-present.

10 38. All notes, records and the like associated with said CF 5147 for said years. "Computer

11 Form (CF) 5147 is generated at the campus each time a master file action occurs. It

12 contains the refile Document Locator Number (DLN) and related information regarding

13 the action." IRM 3.5, Accounts Services." IRM 4.4.32.11 (12-17-2010) Shipment of

14 Source Document Folders http://www.irs.gov/irm/part4/irm_04-004-032.html (October 2,

15 2013).

16 39. Business Master File (BMF with EIN nn-nnnnnnn, where nn-nnnnnnn is the Defendant's

17 Social Security number hyphenated as shown). This request is based in part on IRM

18 4.2.1.1 (10-01-2003) Identification and Control Number - The similarity of taxpayers' names and

19 the voluminous flows of documents require the use of permanent identifying numbers coupled

20 with taxpayers' names. These numbers are necessary for ADP purposes to ensure positive control

21 of each tax account and all related transactions. http://www.irs.gov/irm/part4/irm_04-002-001.html (September 29, 2013).

22 40. All documents which show what the first and original entry was for all DLNs, as well as

23 for all adjustment documents such as Form 12775 - ADJ54 Adjustment Format 12775,

24 Form 12249 - Adjustment Document, or 13128 - On-Line Adjustment or any currently

25 used documents to input the information into the Computer Forms (CF) 5147 that pertain

26 to each of the Document Locator Numbers found in Dr. Bailey's IMF. To the extent that

27

28

1 some Transaction Code entries in Dr. Bailey's IMF (Individual Master File) will show
 2 transaction dates after the cycle post-date, this is an indication that the data originally
 3 entered has been changed after that entry was checked for statutory and administrative
 4 compliance and the cycle post-date was issued). There should be two or more sets of
 5 documents for each DLN.

6 i. The first set of documents would show the original Transaction Code that
 7 was entered into the computer system and was checked for compliance as
 8 evidenced by the Cycle Post Date.
 9 ii. The second set of documents would show what is currently in the IMF
 10 record.

11 41. A copy of every record, including transaction code, by whatever name known, that was
 12 entered anywhere on any transcript pertaining to Dr. Bailey and which has subsequently
 13 been deleted, reversed or made to disappear by any means.

14 v. **General Records And Delegation Orders Which Demonstrate That
 15 Any Taxes Allegedly Due By Dr. Bailey Were Not Imposed Upon Him
 16 By The Internal Revenue Code**

17 42. Treasury Order 150-10, dated April 22, 1982.
 18 43. Delegation Order 5-2 (Rev 1), dated September 19, 2012.
 19 44. Internal Revenue Manual - 4.19.17 Non-Filer Program in which this statement "Returns
 20 submitted must have the taxpayer's signature" appears. This version of the IRM would
 21 have been current in or about the year 2006. This statement allegedly appeared in the
 22 IRM Part 4. Examining Process, Chapter 19 Liability Determination, Section 17 Non-
 23 Filer Program, at subsection 4.19.17.1.3.1 (11-10-2006) Substitute For Return
 24 Procedures, ¶ 10.
 25 45. The subsequent genealogy of Internal Revenue Manual - 4.19.17 Non-Filer Program so
 26 as to enable defendant to trace the 2006 version of this Program to the present version in
 27 the current IRM. See here for a partial copy of the materials sought:

1 <http://famguardian.org/TaxFreedom/CitesByTopic/FDCPA-IRM4.19.17.1.2-20071130.pdf> (October 3, 2013).

2

3 46. A copy of the Testimony of Dwight E. Avis, Head of the Alcohol and Tobacco Tax

4 Division of the Bureau of Internal Revenue, in or about 1953, before the House Ways and

5 Means Committee on Restructuring the IRS (83rd Congress, 1953), pages 1, 2 and 13 of

6 said hearings, dated Tuesday, February 3, 1956, when he is alleged to have stated: "Let

7 me point this out now. Your income tax is 100 percent voluntary tax, and your liquor tax

8 is 100 percent enforced tax. Now the situation is as different as day and night.

9 Consequently, your same rules just will not apply."

10 47. A copy of every deficiency determination made pertaining to defendant for tax years

11 1998-present and all documents, in any form, used to make such determinations. IRM

12 4.19.17.1 (01-05-2010) - *Non-Filer Program* - provides, in relevant part: "Internal

13 Revenue Code Section (IRC) 6212 authorizes the Service to send a notice of deficiency

14 when a taxpayer appears to have a filing requirement but does not comply by voluntarily

15 filing a tax return." IRC § 6212(a) provides, in relevant part: "If the Secretary determines

16 that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41,

17 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by

18 certified mail or registered mail."

19 48. A copy of every deficiency determination made pertaining to defendant for tax years

20 1998-present and all documents, in any form, used to make such determinations.

21 49. The statutory authority upon which such deficiency determinations referred to above

22 were made.

23 50. The complete chain, from the Secretary to the individual(s) who initiated said deficiency

24 determinations, of specific delegation of authority orders authorizing the insertion of

25 substitutes for return, substitute for return packages, and substitute for return computer

26 transaction codes, into the IRS records pertaining to Dr. Bailey.

1 51. The complete chain, from the Secretary to the ASFR (Automated Substitute for Return)
2 IRS unit within the IRS that initiated said deficiency determinations, of specific
3 delegation of authority orders authorizing the insertion of substitutes for return, substitute
4 for return packages, and substitute for return computer transaction codes, into the IRS
5 records pertaining to Dr. Bailey.

6 52. A copy of each Form 13496, IRC Section 6020(b) Certification, and its automated
7 counterpart, the IRC Section 6020(b) ASFR Certification pertaining to defendant for the
8 tax years 1998-present. See samples at <http://www.irs.gov/pub/irs-ccdm/cc-2007-005.pdf>
9 (October 3, 2013).

10 53. The delegation order that specifically authorized the IRS employee, who signed said IRC
11 Section 6020(b) Certification, and its automated counterpart, the IRC Section 6020(b)
12 ASFR Certification pertaining to defendant, to prepare Form 1040 or any variant thereof
13 under the authority of IRC § 6020(b).

14 54. All training materials whereby IRS employees are instructed as to what items of income
15 are “excluded by law,” pursuant to Treas. Regs. §§ 1.61-1(a) & 1.61-2(a).

16 55. A list of all items of income that are “excluded by law,” pursuant to Treas. Regs. §§ 1.61-
17 1(a) & 1.61-2(a).

18 56. All training materials whereby IRS employees are instructed as to what items of income
19 are “not taxable by the Federal Government under the Constitution,” pursuant to Treas.
20 Reg. § 1.312-6(b).

21 57. A list of all items of income “not taxable by the Federal Government under the
22 Constitution,” pursuant to Treas. Reg. § 1.312-6(b).

23 58. Copies of what are alleged to be IRC § 6020(b) Revenue Officer Training materials
24 posted on the Internet at: <http://www.synapticsparks.info/evidence/c10/pdffiles.html>
25 (October 2, 2013), including all pages pertaining to IRC § 6020(b) contained in this
26 course.

27

28

1 59. Records in any and every format pertaining to the course, referenced immediately above,
 2 pertaining to IRC § 6020(b).

3 60. Revenue Officer Training Manual, Lesson 23 Re: IRC Section 6020(b).
 4 [http://www.synapticsparks.info/evidence/c10/misc/Lesson 23-3.pdf](http://www.synapticsparks.info/evidence/c10/misc/Lesson%2023-3.pdf) (October 4, 2013).
 5 “The IRM (Internal Revenue Manual) restricts the broad delegation shown in figure 23-2
 6 to employment, excise and partnership tax returns because of constitutional issues. You
 7 have already studied audit referrals as a means to enforce compliance on income tax
 8 returns.”

9 61. The Government briefs filed with the Supreme Court in *G.M. Leasing Corp. v. United*
 10 *States*, 429 U.S. 338 (1977).

11 62. The criteria used by the IRS to insure that all “standard Service procedures” are “based
 12 on *Murray’s Lessee*,” as stated by the Supreme Court in *G.M. Leasing, supra*, at 360.⁷

13 63. The name, title, position, job description and duties of the individual who oversees the
 14 application of said criteria to insure that all “standard Service procedures” are based on
 15 *Murray’s Lessee*.

16 64. The name, title, position, job description and duties of the individual who oversees the
 17 application of said criteria to insure that all IRS computer operations are based on
 18 *Murray’s Lessee*.

19 65. Any and all Delegation Orders that specifically authorize IRS personnel to prepare, sign
 20 and execute Form 1040, U.S. Individual Income Tax Return, and any variation of said
 21 form, under the authority of IRC § 6020(b).⁸

22 **B. THE ABOVE DISCOVERY IS RELEVANT OR LIKELY TO LEAD TO**
 23 **RELEVANT EVIDENCE AND MUST BE TURNED OVER**

25 ⁷ See *Murray’s Lessee v. Hoboken Land & Improv. Co.*, 59 U.S. 272, 18 How. 272 (1856);
 26 *GM Leasing Corp. v. United States*, 429 U.S. 338, 360 (1977).

27 ⁸ Due to the volume of records and the need for extensive decoding, defendant respectfully
 28 requests that, where possible, the records be provided in searchable, electronic format.

1 Items 1-8 above clearly go to at least the willfulness element of the charges here as it
 2 would go to Dr. Bailey's good faith belief as to the requirements of the tax laws. For example,
 3 the motion memoranda, exhibits and orders in Dr. Bailey's tax court case could tend to negate
 4 the willfulness element if they showed that the proceedings and final decision there could only
 5 be construed to require Dr. Bailey to file tax returns, without any guidance as to what those
 6 returns had to show. The flipside obviously is that the material could negate Dr. Bailey's good
 7 faith belief as to the requirements of the tax laws. Either way, they are discoverable.

8 The same goes for, for example, other witnesses' grand jury testimony and any
 9 documents reflecting "trusts" with which the government claims Dr. Bailey is associated. It
 10 seems perfectly reasonable that other witnesses would testify about the purpose of trusts which
 11 goes to the heart of an affirmative act and to any good faith belief as to the law. Such is
 12 discoverable.

13 Items 9-41 would also go to at least the willfulness element; and as to the more
 14 technical items listed in 9-65 above, these items clearly go to the deficiency element of the
 15 charged crime. (1) The IRS procedures must comply with the standard set forth in *Murray's*
 16 *Lessee, supra* ("Murray due process Rule"). (2) The government has affirmed that its
 17 procedures are based upon Murray's Lessee. *See GM Leasing, supra*, 429 U.S. 338, 360
 18 (1977).

19
 20 The IRS procedures are implemented by the Master File computer system in
 21 Martinsburg, WV. "Located in Martinsburg, West Virginia, this center **houses the**
 22 **master file records for the entire nation**. Previously known as Martinsburg Computing
 23 Center (MCC)."

24 <http://www.irs.gov/pub/irs-utl/document6209.pdf> at pp. 1-12. (3) These discovery items will
 25 show that the Master File procedures comply with the *Murray* Rule. (4) The items will show that
 26 the Master File was contaminated by AIMS/NMF (Automated Information Management
 27 System/Non Master File) computer codes and procedures which violate the *Murray* Rule. (5)
 28 The items may constitute evidence that Dr. Bailey's supposed tax deficiencies were obtained by

improper and possibly fraudulent use of unauthorized and unconstitutional procedures, i.e., procedures that violate the *Murray* due process Rule.

Therefore, this discovery and chain of evidence will support, for example, a pretrial motion to exclude the IRS records from being admitted; without such IRS record evidence, the government will be unable to prove the “tax deficiency” element of § 7201, likely supporting a pretrial motion to dismiss on the merits. The requested discovery should be compelled.

C. RENEWED REQUEST FOR LEAVE TO FILE ADDITIONAL MOTIONS

The discovery in this matter should be extremely extensive and complex. As such, it is contemplated that, upon receipt of the requested discovery here, further motions will have to be filed, including additional discovery and other pretrial and trial motions. Accordingly, Dr. Bailey in an abundance of caution again requests leave of this Court to file further motions, specifically including motions for discovery, should such motions be warranted.

IV. CONCLUSION

Based on the foregoing, Dr. Bailey respectfully requests that this Court, 1) compel production of the discovery requested, and 2) grant defendant leave to file further appropriate discovery motions.

Respectfully submitted,

Dated: November 9, 2013

s/*David M. Michael*
DAVID M. MICHAEL
Attorney for Defendant WILLIAM RICHARD BAILEY

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that, on 9 November 2013, I electronically filed the foregoing with the Clerk of the Court for the Southern District of California by using the CM/ECF system. I certify
Memorandum Of Points And Authorities In Support Of Defendant's Second/Supplemental Motion For Discovery; Request for Leave to File Additional Motions
CASE NO. 13 CR 3046 CAB

1 that all participants in the case are, or have applied to be, registered CM/ECF users and that
2 service will be accomplished by the CM/ECF system.

3 *s/*David M. Michael
4 DAVID M. MICHAEL
5 Attorney for Defendant WILLIAM RICHARD BAILEY